

**UNITED STATES DISTRICT COURT
District of Maine**

COLT DEFENSE LLC,

Plaintiff

v.

BUSHMASTER FIREARMS., INC.,

Defendant

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Civil No. 04-240-P-S

**ORDER AFFIRMING THE
RECOMMENDED DECISION OF THE MAGISTRATE JUDGE**

The United States Magistrate Judge filed with the Court on September 20, 2005 (Docket # 76), his Memorandum Decision on Defendant's Motion to Exclude (Docket # 36) and Recommended Decision on Defendant's Motion for Summary Judgment (Docket # 38) .

Plaintiff filed its Objection (Docket # 82) to the Order and Memorandum Decision (Docket # 76) as to Motion to Exclude Expert Testimony (Docket # 36) on October 14, 2005.

Plaintiff filed its Objection (Docket # 83) to the Recommended Decision (Docket #76) on the Motion for Summary Judgment (Docket # 38) on October 14, 2005.

Defendant filed its Response (Docket #85) as to Plaintiff's Objection (Docket #83) to the Recommended Decision (Docket #76) on Motion for Summary Judgment (Docket #38) on October 31, 2005.

Defendant filed its Response (Docket # 86) to Plaintiff's Objection (Docket #82) to the Order and Memorandum Decision (Docket #76) on Motion to Exclude Expert Testimony (Docket #36) on October 31, 2005.

Plaintiff filed its Reply (Docket #90) in Support of its Objection to Recommended Decision (Docket #83) on the Motion for Summary Judgment (Docket #38).

I have reviewed and considered the Magistrate Judge's Recommended Decision, together with the entire record; I have made a de novo determination of all matters adjudicated by the Magistrate Judge's Memorandum Decision on Defendant's Motion to Exclude (Docket #36) and Recommended Decision on Defendant's Motion for Summary Judgment (Docket #38); and I concur with the recommendations of the United States Magistrate Judge for the reasons set forth in his Memorandum Decision and Recommended Decision (Docket #76), and determine that no further proceeding is necessary.

1. It is hereby ORDERED that the Memorandum Decision and Recommended Decision (Docket #76) is hereby AFFIRMED.
2. It is hereby ORDERED that Defendant Bushmaster's Motion to Exclude Certain Testimony of Expert LaPlante (Docket #36) is GRANTED IN PART and DENIED IN PART.

Defendant Bushmaster's Motion for Summary Judgment (Docket #38) is GRANTED as to (i) Counts I, III, V, IX and XI of Colt's Complaint (Docket # 1, parts 1 and 2), and (ii) Count I of Bushmaster's Counterclaim (Docket # 1, part 8) (seeking cancellation of Colt's federal registration for the mark M4, Registration No. 2,734,001) and (iii) Count VII of Colt's Complaint (Docket # 1, parts 1 and 2) only to its first claim of false advertising as to the marks M4, COLT AR-15, and COLT AR-15 and design, and otherwise DENIED.

Remaining for trial is Count VII, except with respect to the first claim of false advertising as to the marks M4, COLT AR-15 and COLT AR-15 and design. To the extent that VII has survived summary judgment, the Court GRANTS and hereby ORDERS that Plaintiff Colt be excluded from recovering damages on Count VII of its Complaint.

/s/ George Z. Singal
Chief U.S. District Judge

Dated this 6th day of December, 2005.